ing £10 in value and mailed the checks in payment in accordance with the terms of the agreement. The defendants returned the checks and refused to deliver the goods. *Held*, that there is no payment sufficient to render the contract enforceable under the Sale of Goods Act. *Davis* v. *Phillips, Mills & Co.*, 24 T. L. R. 4 (Eng., K. B. D., Oct. 15, 1907).

Payment by check on funds in a bank is sufficient to come within the similar requirement in § 17 of the statute of frauds. *Hunter* v. *Wetsell*, 84 N. Y. 549. But on the point of mere tender of payment, for the first time litigated in England, the court follows the settled American rule, that the seller may decline a tender, though made strictly according to the terms of the agreement, and that an acceptance of payment is necessary to take a verbal agreement out of the statute. *Hershey Lumber Co.* v. *St. Paul Sash Co*, 66 Minn. 449; *Edgerton* v. *Hodge*, 41 Vt. 676. It is contended that the Post Office was the authorized agent of the parties to accept payment. But the object of the statute was to require something to pass between the parties other than mere words, some act which would be strong evidence of their actual agreement. Such acceptance by the Post Office would occur in the absence of any agreement; consequently it has no force as evidence of an agreement, and is insufficient to render such an oral contract enforceable under the Act.

STATUTES — INTERPRETATION — EFFECT OF SPECIAL SAVING CLAUSE ON GENERAL SAVING STATUTE. — The defendant was indicted and convicted of paying rebates in violation of the first section of the Elkins Act, which had been superseded by the Hepburn Act. The offenses were committed prior to the enactment of the latter. The Hepburn Act expressly repeals all statutes or parts of statutes in conflict with its provisions. It contains an express saving clause mentioning only pending causes, but § 13 of the United States Revised Statutes provides that "the repeal of any statute shall not have the effect to release any penalty incurred under such statute unless the repealing act shall so expressly provide." *Held*, that the conviction is valid. *Great Northern Ry.* v. *United States*, 155 Fed. 945 (C. C. A., Eighth Circ.).

For a discussion of a previous decision reaching the same result, see 20 HARV. L. REV. 502.

TITLE OWNERSHIP AND POSSESSION — POSSESSION OF CONTENTS OF RECEPTACLE. — After seizure of his goods under a writ of *fieri facias* the judgment debtor, without the knowledge of the sheriff, placed a sum of money in a piece of the furniture seized. Shortly afterwards he died insolvent. The sheriff having exercised no control over the money, the official receiver claimed it for the estate. *Held*, that the receiver is entitled to the money. *Johnson* v. *Pickering*, 24 T. L. R. 1 (Eng., Ct. App., Oct. 14, 1907).

For a discussion of this case in the lower court, see 21 HARV. L. REV. 64.

TRUSTS — POWERS OF TRUSTEES — TRUSTEE'S RIGHT TO LEASE TRUST PROPERTY. — Trustees with express power to lease made a 99 year lease of trust property consisting of city lots. It was estimated that the lease would extend 28 years beyond the duration of the trust estate. By the terms of the agreement it was to be binding only after judicial sanction. *Held*, that in the absence of necessity therefor, the term is unreasonable, and judicial sanction will be refused. *In re Hubbell Trust*, 113 N. W. 512 (Ia.). See NOTES, p. 211.

WATERS AND WATERCOURSES — OWNERSHIP OF BED — POSITION OF STATE BOUNDARY LINE AFTER AVULSION. — The Mississippi River, which marked the boundary between Tennessee and Arkansas, in 1876 suddenly left its old channel and made a new cut-off across a neck of land. *Held*, that the boundary is not changed and the state owns the old bed to the line equidistant from the established banks. *State* v. *Muncie Pulp Co.*, 104 S. W. 437 (Tenn.).

By common law the soil of a river is *primâ facie* in the Crown as far as the tide ebbs and flows. *Malcomson* v. *O'Dea*, 10 H. L. Cas. 591. But western states have in general followed the civil law in making the state's title to a river-

bed depend on the fact of navigability. *Goodwin* v. *Thompson*, 15 Lea (Tenn.) 209. In the absence of treaty or agreement the exact boundary between states is held, by the weight of authority, to be the "thread" of the stream, or the middle of the main navigable channel, on the principle that the right of each state to equality in the control of navigation demands an equality of ownership in that channel. *Iowa* v. *Illinois*, 147 U. S. 1. Arkansas, however, has held the boundary to be the line midway between the banks of the river. *Cessill* v. *State*, 40 Ark. 501. The decision of the present case on this point may be considered as an agreement by Tennessee to that line. On the other point the law is well settled in accord with the case, that an avulsion will leave the boundary as before, in the old bed. *Nebraska* v. *Iowa*, 143 U. S. 359.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

THE PRESENT INADEQUACY OF INTERSTATE RENDITION. — The late kidnapping of Haywood and others from Colorado and the legal contest ensuing therefrom suggest several questions in constitutional law and in interstate rendition, which are treated by Mr. C. P. McCarthy in a recent article. *A Constitutional Question Suggested by the Trial of William D. Haywood*, 19 Green Bag 636 (November, 1907). Haywood and the others, who were in Colorado, were charged in Idaho with being accessories before the fact while in Colorado to a murder committed in Idaho. Through connivance between the officials of the two states, they were kidnapped in Colorado by Idaho officials and carried into Idaho. They instituted *habeas corpus* proceedings to secure their release, but the United States Supreme Court decided against them.[1] Mr. McCarthy's initial assumption that this result is correct and established law is indisputable.[2] An offender against one state has no right of asylum in another. He is untouched there solely because the machinery of the offended state cannot reach him. Accordingly, when that difficulty is removed by his actual presence within the jurisdiction, there is no reason for not holding him. But the query is whether or not it is necessary to resort to this procedure which has so little to commend it to an orderly community. The author points out that in this situation there is no other way under our present laws whereby the outraged sovereignty can secure the offender to inflict punishment. The federal Constitution provides that any person who shall flee from justice shall be delivered up on demand of the state from which he fled. It is now entirely settled that for the demand to come within this provision, the party demanded must have been within the demanding state at the time the crime was committed.[3] This was not the situation in the Haywood case, nor would it be in the many instances in which a party can commit a crime against a state without being physically within its territory. Mr. McCarthy then considers whether there is any way of meeting these situations.

A constitutional amendment would, of course, afford a remedy, but that is not now feasible. Until such amendment, congressional legislation covering the situation would be unconstitutional, as there is no warrant for federal action except in the case of fleeing criminals.[4] State action remains as the only pos-

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[1] Pettibone *v.* Nichols, 203 U. S. 192.

[2] He cites the leading cases in accord. There are only two *contra*. State *v.* Simmons, 39 Kan. 262; *In re* Robinson, 29 Neb. 135.

[3] Hyatt *v.* Corkran, 188 U. S. 691.

[4] It has been contended that in enacting the present statute Congress has exceeded its powers. Matter of Romaine, 23 Cal. 585. *Contra*, *Ex parte* Morgan, 20 Fed. 298, 303.